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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Thursday, April 2, 2020 11:55 AM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Subject:** Re: BBEDC v EPA

Brian--

I think what's missing from your analysis here is the fact that the court system entered the order. Although I admit things are crazy here, this is really about what the court system wants to prioritize in this crisis, not about the parties convenience. The courts have said this type of case is not on the priority list, and that's fine, honestly, this Pebble mine issue has been going for years and years, I don't think it should be priority. Criminal and emergency matters should definitely get first billing over this.

Of course it's up to the plaintiffs if they want to file something, but I can't agree that this case deserves any special treatment in a crisis.

--Lael

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**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Sent:** Thursday, April 2, 2020 8:42 AM  
**To:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Subject:** Re: BBEDC v EPA

Hi Lael,

Thanks for getting back to me. Is there a date you can commit to? If not, we will file a motion in short order requesting that the court establish a schedule compelling the State to file its brief. While I understand the nature of things given Covid 19, the State's brief was due just one day after the order was issued. Given the fact that the State should have been close to completing its brief, it does not seem unreasonable to request that the State submit its brief. The only thing holding back the process at this point is the State's brief. As you may know, Judge Sedwick is proceeding with the Izembek case and is not delaying briefing. Because these administrative record cases don't include the elements of most of the court matters identified in the order (e.g. criminal cases and cases that have trial aspects to them, including discovery), this is a case that can easily move forward despite Covid.

I respectfully ask if you can reconsider the State's position and get back to me by 3pm today.

Sincerely, Brian

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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Thursday, April 2, 2020 8:23 AM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Subject:** Re: BBEDC v EPA

Brian, I'm sorry, I spoke too soon yesterday. I can't be sure we'll be able to file by 4/6. Things are just so scrambled here right now, between the extra Covid work and trying to coordinate everyone working remotely. I really will try to keep this moving forward, but it looks like I shouldn't commit to a date certain. Apologies.

--Lael

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**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Sent:** Wednesday, April 1, 2020 2:46 PM  
**To:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Subject:** Re: BBEDC v EPA

Lael,

We do not intend to have an oral argument in April. At best, we would be lucky to have a telephonic hearing in May. Our primary goal is to get the briefing completed so the court can, if it so chooses, review and consider the materials and not get delayed in that review. I am happy to include a statement in the motion that we are open to a telephonic hearing in May or June (or in person if appropriate, which I highly doubt).

If you have thoughts about how to indicate to the court that we are not seeking oral argument during the stay period, please share them with me.

Thanks, Brian

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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Wednesday, April 1, 2020 2:42 PM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Subject:** Re: BBEDC v EPA

Brian--Sure, I'm comfortable agreeing to file by 4/6. That said, I think the plaintiffs have requested oral argument. Are they planning to withdraw that request, given the current situation? I just want to be clear that by agreeing to file on 4/6, I'm not necessarily agreeing to anything with regards to scheduling an oral argument during the stay. Are there thoughts on that, at this point?

Yours, Lael

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**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Sent:** Wednesday, April 1, 2020 2:24 PM  
**To:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Subject:** RE: BBEDC v EPA

Hi Lael,

I wanted to check in again regarding the State's intent to file its brief by a date certain, perhaps as early as the end of this week. We intend to file a motion to lift the stay to keep the case moving forward. I would like to see if we could agree to a revised schedule that I could include in our motion. If you don't plan on filing by Friday, would you be amenable to a schedule, filing your brief by the 6<sup>th</sup>? We would ask that our deadline mirror the two weeks we would have had if the State filed its brief on the 31<sup>st</sup>. That would move our brief out to the 20<sup>th</sup>. Given that we were so close to getting the State's brief prior to the courts stay, I hope the proposed deadline is sufficient. And if you can also let me know whether the State will not oppose our motion, that would be great. I would like to file the motion by Monday, the 6<sup>th</sup>. Because the briefing is almost complete, and that the case is based on an administrative record and requires no trial or discovery, it is well suited for disposition from the court. More importantly, because the Corps remains on track for a final environmental impact statement by mid-June, with a ROD potentially as soon as mid-July, we would prefer to provide the court with as much time as possible to review the briefing and potentially hold argument.

Please feel free to email or call me,

Thanks, Brian

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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Tuesday, March 31, 2020 2:00 PM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Subject:** RE: BBEDC v EPA

Brian, thanks for checking in. We are not planning to file today, but I think this week is likely? I must admit we are swamped over here and the court's order came as a relief. So this has dropped a level of priority, but I still think it will get done this week. I'll check back in with you in a couple of days and let you know where we're at.

Hope you are doing well, and staying safe.

--Lael

**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>

**Sent:** Tuesday, March 31, 2020 1:52 PM

**To:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>

**Subject:** BBEDC v EPA

Hello Lael,

I wanted to check in with you regarding the State's intentions in light of yesterday's court order. It is our understanding that the Corps remains on schedule. While the court has stayed schedules, given how close we are to concluding briefing, we believe it would be best to complete briefing according to the schedule. This will provide the court with a longer period of time to review the submitted materials.

Can you let me know whether you plan to file by the end of the day. If not, are you amenable to filing within the week to keep things moving. We are prepared to submit our brief on the 14<sup>th</sup> if the State files today.

Thank you, Brian

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